S.B.Civil Misc. Appeal No.1348/2005

Regional Director and another vs. M/s. P.C. Mills.

Date : 17.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. RK Soni, for the appellants.

Mr. Dinesh Sharma, for the respondent.

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At the request of learned counsel for the parties, this appeal is finally heard and disposed of.

Details facts of the case are not necessary because the order under challenge is an order of ESI Court dated 30.7.2005 is only to the effect that the applicant/ respondent has furnished the bank guarantee for Rs.11,600/-. The respondent was supposed to deposit 50% of the claim amount under Sub-section 2(b) of Section 75 of Employees State Insurance Act, 1948 (for short 'the Act of 1948'). On submitting of the bank guarantee by the respondent, the court below suo moto passed the order that since the respondent has furnished the bank guarantee, therefore, a direction be issued to Pali Urban Cooperative Bank Ltd. that without the permission of the Court, no one be allowed to encash the bank guarantee submitted by the applicant/respondent.

The grievance of the appellants is that the respondent has not deposited the requisite amount as required under

Section 75(2)(b) of the Act of 1948. According to learned counsel for the appellants, therefore, the court below should have rejected the petition filed by the applicant/ respondent.

Learned counsel for the respondent vehemently submitted that the appeal is not maintainable in view of the fact that under Section 82, no appeal lies against the order like the order dated 30.7.2005. It is also submitted that otherwise also, the court below has ample discretionary power under Section 75(2)(b) of the Act of 1948. Learned counsel for the respondent relied upon a judgment of this Court delivered in the case of M/s. Chetak Stones Pvt. Ltd. vs. The Deputy Director & Ors. reported in 2005(10) RDD 4570 (Raj.) wherein this Court held that the order passed under Section 75(2)(b) is a discretionary order and the High Court will not sit as appellate court over such discretionary order.

I have considered the submissions of learned counsel for the parties and perused the order-sheets placed on record which includes the order of registering the case under Section 75(2)(b) and mention of present appellant's application pointing out that the present respondent has not deposited 50% of the claim amount as required under Section 75(2)(b). It is not in dispute that the respondent/applicant suo moto submitted bank guarantee for the requisite amount which should have been deposited in cash under Section 75(2)(b). The court merely passed the

order directing the bank concerned who issued the bank guarantee, to not to pay the amount to anybody. It appears from all above facts that the court below has not applied its mind about the maintainability of the claim petition filed by the respondent/applicant in view of the non-compliance of Section 75(2)(b).

So far as submission of the bank guarantee by the respondent is concerned, that is of no consequence because there is no such provision under Section 75(2)(b) of the Act of 1948 of submitting bank guarantee suo moto nor it has authorised even the Court to accept the bank guarantee in lieu of cash deposit. The discretion given to the Court is only to pass appropriate order with respect to the amount for which the applicant is required to deposit in Court and that discretion is only with respect to quantum by which the court can permit the respondent/applicant to deposit less amount than 50% of claim amount.

In view of the above, this misc. appeal is disposed of with a direction to the court below to consider and decide the objection raised by the present appellants about the non-furnishing of the requisite amount under Section 75(2)(b) of the Act of 1948 by the present respondent. The objection be decided within a period of two months from the receipt of copy of the present order.

(PRAKASH TATIA), J.

S.Phophaliya